S.B. CIVIL WRIT PETITION NO.5065/2003

DATE OF ORDER: 28.3.2006

HON'BLE MR.R.C. GANDHI, J.

Mr. Vijay Mehta, for the petitioner/s.
Mr. Ashok Chhangani, for the respondent/s.

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The petition has been filed seeking to quash the order dated 7.6.2003 whereby the learned Judge, Labour Court, Jodhpur has dismissed the application for restoration of the claimant in default for appearance on 30.9.2002. The application has been dismissed observing that the petitioner could not satisfy the Court making out sufficient cause for his non-appearance on 30.9.2002.

Heard learned counsel for the parties.

Learned counsel for the respondents has filed reply, which has been perused.

The learned counsel for the petitioner has stated in the application that the petitioner has appointed his attorney / representative to appear and prosecute her claim before the Labour Court. The said representative met with an accident and could not appear on the said date i.e. 30.9.2002 before the Court. It is also stated by him that the representative though had met with an accident

but did not inform the petitioner that he is disabled to appear before the Court on account of accident. The reply filed by the respondents has been considered wherein it is stated that the representative was appearing in four separate cases before the Court including the case of the petitioner. Because of the accident of the representative, other claimants appeared in other three cases whereas the petitioner did not appear. It is not made out by the respondents for appreciation of the Court that the petitioner had the knowledge of the accident of her representative or the representative had informed the petitioner that he will not appear on account of the accident. The Labour Court has erroneously appreciated this argument and came to the conclusion for dismissal of the application. Otherwise also, the courts must be very careful and slow in dealing with the restoration applications as in some cases great injustice may be the result thereof.

For the aforesaid reason, the writ petition is allowed and the order dated 7.6.2003 passed by the Labour Court is set-aside. The claim petition is restored and the petitioner shall appear before the labour court on due date.

(R.C. Gandhi), J.

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